

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IN RE:

**KMK OIL & GAS, INC.
EIN 45-3506343**

DEBTOR

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§

**CASE NO. 17-20116
CHAPTER 11**

EMERGENCY MOTION FOR TURNOVER

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, KMK Oil & Gas, Inc., Debtor, filing this its Emergency Motion for Turnover,
and as grounds therefore would respectfully show the Court as follows:

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS APPLICATION SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER WILL SET A HEARING. IF YOU FAIL TO APPEAR AT ANY SCHEDULED HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

Jurisdiction, Venue and Statutory Basis

1. The United States Bankruptcy Court for the Eastern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157 (b)(2). Venue is proper pursuant to 28 U.S.C. §1408 and 1409.

2. The basis for relief requested in this motion are Sections 105(a), 11 U.S.C. §542 and

543, §541(a)(1), 11 U.S.C. § 363; 1107 and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, and the local rules for the Eastern District of Texas.

Background

3. On the date of this Motion (the "Petition Date"), the Debtor commenced a case by filing a petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage the leases of the joint venture as a Debtor-in-Possession pursuant to Sections 1107 (a) and 1108 of the Bankruptcy Code.

4. To date, no creditors' committee has been appointed in the Chapter 11 case by the office of the United States Trustee for the Eastern District of Texas (the "U.S. Trustee"). No trustee or examiner has been appointed in the Chapter 11 case.

KMK's Business Operations

5. KMK was formed in 2011 by the sole shareholder, Kenneth M. Kleinke. Mr. Kleinke began in the oil and gas business in 1981 with Warren Exploration Corporation of Mississippi, completing eighteen (18) to twenty (20) shallow gas wells in Marion County. Since that time, Mr. Kleinke has been involved in oil and gas projects in Mississippi, Louisiana, and Texas. After its formation, KMK purchased approximately 1,100 mineral acres in Marion County, Texas. Currently, KMK has under lease 1,226.66 acres which includes the Benton #1 and the Cannonball #1 prospects. The mineral leases are divided among the following tracts:

	Tract #	Size	Tract Name
A	Tract 1	208.47 acres	Wood Tract
B	Tract 2	90.00 acres	Blackburn Tract
C	Tract 3	100.00 acres	Benton Tract
D	Tract 4	107.00 acres	Loughbridge Tract

	Tract #	Size	Tract Name
E	Tract 5	100.00 acres	Dotson Tract
F	Tract 6	170.00 acres	Moody Tract
G	Tract 7	82.84 acres	F. Johnson Tract
H	Tract 8	112.50 acres	Hall Tract
I	Tract 9	34.00 acres	Watts Tract
J	Tract 10	35.00 acres	Crumby Tract
K	Tract 11	40.00 acres	Young Tract
L	Tract 12	146.85 acres	Rowell Tract
TOTAL ACREAGE		1,226.66 ACRES	

There are a total of 1,226.66 acres under lease, part of which include the 700 acre Benton Gas Unit, which is also currently under research for oil production by KMK Oil & Gas, Inc. The project has the goal of drilling the Cannonball #1, along with the improvement of Benton # 1.

6. KMK has enlisted 31 subscribers to participate in a joint venture for the exploration of oil and gas in Marion County, Texas. This project is known as the Cannonball #1 prospect. For this purpose, KMK obtained the above leases, prepared roads and took the initial actions necessary for drilling the well including obtaining 2d seismographic readings. Now KMK needs to take additional steps, including the hiring of a landman and filing the additional subscriptions in order to have the Cannonball #1 prospect drilled. KMK was in the process of taking these actions.

7. Prior to KMK being able to complete the work necessary to continue with the project, an action was filed in State District Court for A Prejudgment Garnishment of all of KMK's accounts. A writ of prejudgment garnishment was issued on behalf of Rod Becker, Matt Becker, Dwight Becker, David Knapp, Katy Doughty and Bob Smith as Plaintiffs in the action filed in Harrison County, Texas styled: *Rod Becker, Matt Becker, Dwight Becker, David Knapp, Katy Doughty and*

Bob Smith v. JPMorgan Chase Bank, N.A., Cause no. 17-0518 in the 71st Judicial District Court of Harrison County, Texas. The effect was to freeze all of the working capital available to KMK, totaling \$810,000.00. The writ was issued on June 2, 2017. Since that time, KMK has been unable to proceed with operations or pay ongoing expenses. At this time, no debt has been established by the Plaintiffs as this matter is in the early stages of arbitration and, as noted, this is a prejudgment Writ of Garnishment. In fact, the Plaintiffs state the arbitration is in its infancy. Further, the claim seems to be based upon allegations of fraud and/or coercion.

8. No judgment has been entered and no execution has been made against the accounts. Therefore, pursuant to 11 U.S.C. § 541, the proceeds in the account are property of the Bankruptcy estate. The Debtor owns the accounts and is entitled to possession of the accounts pursuant to 11 U.S.C. §541(a). The claimants state in their application that the gross sum invested is \$495,875.00. Two things should stand out from this: 1) This is an investment and not a loan, therefore, while a "claim" may exist, it is neither liquidated nor non-contingent; and 2) The gross amount is \$495,875.00, much less than the amounts in the accounts and less than the value of the leases held by KMK Oil & Gas, Inc.

9. At this time there are twenty-five (25) other subscribers with the same position as claimants. Since the Chapter 11 has been filed, however, this is now a claim against the estate and, therefore, subject to the jurisdiction of the Bankruptcy Court.

10. The Plaintiffs have garnished four accounts totaling \$878,453.30. These accounts are located at JP Morgan Chase Bank in Marshall and are listed as follows:

Account Number XXXXXXXXXXXX0130	\$491,494.65
Account Number XXXXXXXXXXXX2538	\$ 95,940.65
Account Number XXXXXXXXXXXX5026	\$182,763.51
Account Number XXXXXXXXXXXX3007	\$108,254.57
TOTAL:	\$878,453.38

11. Without access to the funds, the Debtor cannot move forward to develop the Cannonball #1 prospect, pay vendors for post petition work or obtain the additional subscription for drilling of the well.

WHEREFORE, PREMISES CONSIDERED, KMK Oil & Gas, Inc. respectfully requests that this Court enter its order as follows:

1. The Court set this matter for hearing;
2. The Court enter an order turning over the property to the Debtor;
3. That the Court grant KMK Oil & Gas, Inc. at least \$2,500.00 as reasonable and necessary attorney's fees;
4. That KMK Oil & Gas, Inc. be granted reasonable expenses incurred in obtaining this order;
5. That KMK Oil & Gas, Inc. be granted such other and further relief, special or general, legal or equitable, as may be shown that it is justly entitled to receive.

Respectfully submitted,

RITCHESON, LAUFFER & VINCENT, P.C.
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Tyler, Texas 75701
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charlesl@rllawfirm.net

By: 

CHARLES E. LAUFFER, JR.
State Bar No. 11989400

ATTORNEYS FOR KMK OIL & GAS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was mailed by United States mail, postage prepaid, facsimile and/or electronic means, to:

Josh B. Maness
480 W Texas Avenue
Waskom TX 75692
josh@joshmaness.com and manessjosh@hotmail.com

JPMorgan Chase Bank, N.A.
112 W. Austin Street
Marshall TX 75670
Fax: (855) 408-5573

John Vardeman
Office of the U.S. Trustee
110 N. College Ave, Suite 300
Tyler TX 75702
john.m.vardeman@usdoj.gov

and the 20 largest unsecured creditors, a list of which is attached,

on this the 29th day of June, 2017.



CHARLES E. LAUFFER, JR.

20 Largest Unsecured Creditors

A.F. Whatley Construction
11950 HWY 43
Bivins TX 75555

Adam Young
unknown
Jefferson TX

Adkisson Production & Consulting
PO BOX 258
Longview TX 75606

Anatesco, Inc.
PO BOX 8225
Tyler TX 75711

Andrew Bukosky
3440 W. Hillsdale
Bisalia CA 93291

ARK LA TEX Surveying Co, Inc.
PO BOX 910
Marshall TX 75671

AT&T
PO BOX 536216
Atlanta GA 30353

B-N-R Enterprises
1407 La Forge Rd
Hallsville TX 75650

Basic Energy Service
PO BOX 841903
Dallas TX 75284

Betco Insurance
3700 Market Square Circle
Davenport IA 52807

Binit Shah
8163 Campden Lake Blvd
Dublin OH 43016

Carl Worster
13514 West Virginia Drive
Lakewood CO 80228

Casson Media Group
14800 Landmark Blvd
Suite 190
Dallas TX 75254

Centerpoint Energy
PO BOX 4981
Houston TX 77210-4981

City of Marshall
PO BOX 698
Marshall TX 75671

Compression Controls & Rental, LLC
5797 FM 2011
Longview TX 75603

Computers Unlimited
170 Pecan Drive
Hallsville TX 75650

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